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WT Docket No. 97-82

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*and Order ("Reconsideration Order").*³ For the reasons set forth below, SBC believes that the procedural route Petitioners have proposed is unnecessary and could delay making the spectrum at auction available to the public. As SBC has stated in its other filings in connection with the upcoming auction, it believes that 30 MHz of spectrum is essential if any new entrant is to compete successfully with the established wireless carriers in the market. For this reason, SBC strongly opposes the Petitioners' request that the various 30 MHz licenses be split into three 10 MHz licenses. As for Petitioners' other requests, SBC has previously made clear that non-designated entities should be permitted to bid in this auction, that designated entities should continue to receive bidding credits and that the Commission should utilize a single simultaneous multi-round auction of all licenses.

Background

On January 21, 2000, SBC filed a petition with the Commission requesting that it waive Section 24.709 of its rules to allow SBC to bid in the July 26th Auction. SBC maintained that a waiver of that rule was essential if this C & F Block spectrum, which has lain fallow for so many years, was to be put to effective use promptly. SBC's waiver request was narrowly tailored so that the Commission could act on it quickly without

Footnote continued from previous page
CMRS Spectrum Cap, (filed Feb. 15, 2000), *Petition of BellSouth Corporation and Bell Atlantic Mobile Inc. for Waiver of the CMRS Spectrum Cap*, (filed Feb. 17, 2000).

³ *In re Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licenses*, Order on Reconsideration of the Fourth Report and Order, WT Docket No. 97-82, FCC 00-54, 2000 WL 224393 (Feb. 29, 2000).

delaying the auction or requiring the extensive procedural steps of a rulemaking proceeding.⁴

Subsequently, Nextel Communications Inc. (“Nextel”) submitted a request for a rulemaking proceeding (or, alternatively, for waivers), and AT&T Wireless Services, Inc., Bell Atlantic Mobile, Inc. and BellSouth Corporation sought waivers of the spectrum cap rule that would materially alter the regulatory landscape for C & F Block licenses. The Commission placed each of these requests on Public Notice and sought comments with respect to them.⁵

On April 4, 2000, Petitioners filed a Petition for Reconsideration of the Commission’s *Reconsideration Order* urging the Commission to consolidate all of the various waiver proceedings with their own reconsideration petition. Specifically, Petitioners request the Commission to:

- divide the 30 MHz C Block licenses in the upcoming auction into three 10 MHz licenses,
- authorize non-DEs to bid for them and for the other C & F Block licenses in the auction,
- continue to provide DEs with bidding credits,
- utilize a single simultaneous multiple-round auction of all of the licenses and

⁴ *Petition of SBC Communications Inc. for a Waiver of Section 24.709 and for Expedited Action* (filed Jan. 21, 2000).

⁵ See Public Notice, *Wireless Telecommunications Bureau Seeks Comment on Nextel Communications, Inc.’s Petition Regarding PCS C and F Block Spectrum; Extension of Filing Deadline for Comments to SBC Communications Inc.’s Request for Waiver*, 15 FCC Rcd. 2104 (WTB Feb. 3, 2000); Public Notice, *Wireless Telecommunications Bureau Seeks Comments on AT&T Wireless Services, Inc., BellSouth Corporation and Bell Atlantic Mobile, Inc. Petitions Regarding CMRS Spectrum Cap Limit*, DA 00-318, 2000 WL 197569 (WTB Feb. 18, 2000); Public Notice, *Wireless Telecommunications Bureau Seeks Comment on SBC Communications Inc.’s Request for Waiver of the Eligibility Requirements for Participation in the Upcoming PCS C and F Block Auction*, DA 00-145 (WTB Jan. 31, 2000).

- allow bidders in this auction to acquire more than 98 licenses in the auction.

Argument

A. The Commission Should Not Consolidate the Pending Requests for Relief With Petitioners' Petition for Reconsideration

SBC does not believe that the Commission should consolidate SBC's waiver request and the other pending filings with respect to the July 26th Auction with Petitioners' reconsideration petition. As SBC has maintained throughout these proceedings, it believes that, rather than proceeding by a rulemaking which would amend its rules for C & F Block auctions, the more appropriate procedural avenue is for the Commission to grant a limited waiver to allow non-designated entities to participate in the auction.⁶ As SBC noted in its waiver request, a waiver is uniquely suited to this kind of limited relief: the relief is tied to a specific auction and does not entail a major revision of the Commission's underlying rules. It is a response to a unique situation and does not raise the detailed and complex policy issues which would have to be examined in connection with a general change to the rules.⁷

Consolidating the various pending requests for relief with the Petitioners' petition for reconsideration would almost certainly delay the Commission's ability to resolve these issues. The pleading cycle for each of the pending requests, other than Petitioners' request, have all expired, and the Commission is now in the position to act on them.

⁶ SBC also supports the proposal that the Commission waive Section 24.709(a)(3) to allow non-DEs to assign or transfer any licenses they acquire in the auction to other non-designated entities.

⁷ The maze of rule changes proposed by Petitioners and others, involving extensive and complex revisions to the rules, is testimony to the wisdom of proceeding by waiver rather than through a rulemaking and extensive amendments to the rules.

Consolidating them with the Petitioners' reconsideration petition will require the Commission to allow time for the submission of additional comments and suggestions submitted in response to Petitioners' petition and to consider those comments and suggestions.

Further, additional petitions for reconsideration of the *Reconsideration Order* can be filed today.⁸ Those petitions could raise issues that materially affect the Commission's disposition of the Petitioners' requests, and thus could require the Commission to wait until interested parties had an opportunity to file responses to those new petitions for reconsideration.⁹ That process will only delay action on the requests for relief, potentially complicate this already complex matter, and materially increase the risk that the auction will be delayed and the use of the spectrum postponed further.¹⁰

⁸ Under Section 1.429(d) and Section 1.4(b) of the Commission's rules, petitions for reconsideration can be filed within 30 days after publication of the *Reconsideration Order* in the Federal Register. The thirty day period does not expire until April 17th, since April 15th was a Saturday.

⁹ It should be noted that, by seeking public comment on the various proposals submitted to it, the Commission has effectively satisfied any procedural requirements the Administrative Procedure Act might impose before the Commission could grant the relief sought by SBC and others. *See* 5 U.S.C. § 553(b)-(c). *See Omnipoint Corp. v. FCC*, 78 F.3d 620, 629 (D.C. Cir. 1996) (holding that the Commission satisfied the procedural requirements of the APA by giving "interested parties notice of its proposed rules and provid[ing] public procedures for comment").

¹⁰ While SBC does not believe that reconsideration is the best procedural route to resolve the issues before it concerning the C & F Block auction, it recognizes that reconsideration is one means by which the Commission can address those issues. However, if the Commission elects to reconsider its *Reconsideration Order*, SBC would point out that the Commission must act with extreme expedition to avoid delaying the July 26th Auction.

B. Except for their First Proposal, the Commission
Should Grant Petitioners' Request for Substantive Relief

On the merits, SBC supports all of Petitioners' requests for relief, except for the proposal to divide the 30 MHz C Block licenses into 10 MHz pieces. The second and third proposals are consistent with the positions SBC has advanced to date in this proceeding and will facilitate the prompt provision of new services. The fourth proposal – the use of a single, simultaneous multiple-round auction – is consistent with the manner in which the Commission has handled similar auctions in the past. There is no reason to treat this auction differently.

The proposal to divide the 30 MHz C Block licenses into three 10 MHz Blocks, however, is contrary to the public interest. As SBC has demonstrated in its filings in connection with the Nextel rulemaking petition, it believes that 30 MHz is the minimum spectrum necessary to permit a new, effective competitor to enter the emerging wireless marketplace. Dividing the 30 MHz authorizations into three 10 MHz pieces will allow the established wireless licensees simultaneously to preclude the entry of an additional competitor in the markets they serve and to enhance their existing position in the market.¹¹ While 10 MHz may be a sufficient amount of spectrum to operate a wireless voice and data system at a modest penetration level, any such system would be at a marked disadvantage in offering new and innovative services as compared to competitors who control 25 or 30 MHz. Indeed, if the 30 MHz licenses were divided into 10 MHz

¹¹ See Response of SBC Communications Inc. to Nextel's Petition for Expedited Rulemaking or, in the Alternative, A Waiver of the Commission's Rules, pp. 11-13, DA 00-191 (filed Feb. 22, 2000).

pieces, each slice could be acquired by an existing wireless operator, thereby foreclosing altogether even the possibility of a new entrant with limited spectrum.¹²

However, if the Commission elects to adopt this proposal (or to split the 30 MHz licenses in some other manner), SBC strongly urges it to allow a single bidder who is not currently authorized to provide service in a market to bid on and acquire all three 10 MHz licenses in that market.¹³ In addition, any incumbent licensee that holds 25 or 30 MHz authorizations in a market where there has been such a split should be allowed to acquire only an additional 10 MHz authorization in this re-auction in order to enhance the possibility that a new entrant will be able to compete with incumbent carriers. If that limit remains in place, bidders such as SBC, which are looking to use the spectrum at auction to fill in holes in their service areas, could be precluded from acquiring sufficient spectrum to achieve efficient nationwide coverage, thereby diminishing their ability to become full, effective facilities-based national competitors.

Conclusion

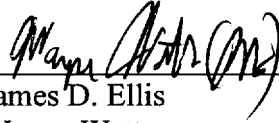
For the reasons set forth above, SBC submits that the better procedural route is for the Commission to address the various filings concerning the upcoming C & F Block auction on their merits and not consolidate them with Petitioners' petition. On the

¹² Even if the existing wireless carriers do not acquire one or more of the three 10 MHz pieces, they can increase entry barriers by running up the cost of that spectrum, to the detriment of any new entrant which ultimately acquires it.

¹³ Similarly, SBC supports the Petitioners' last request, that the Commission waive the 98 license limit of Section 24.710(a).

merits, it strongly urges the Commission to deny Petitioners' request to divide the 30 MHz C Block licenses into three licenses of 10 MHz each and supports the remaining requests.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "James D. Ellis", is written over a horizontal line.

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April 17, 2000

CERTIFICATE OF SERVICE

I, Philip W. Horton, hereby certify that, on this 17th day of April, 2000, copies of the foregoing Comments of SBC Communications Inc. on Petition for Reconsideration of US West Wireless, LLC and Sprint Spectrum L.P. were served by mail on counsel for US West Wireless, LLC and by hand to all others persons listed below at the addresses set forth below:

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